

**United States District Court**  
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

RODOLFO VELASQUEZ,

Plaintiff,

No. C 11-03444 JSW

v.

PATRICK R. DONAHUE, et al.,

Defendants.

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**ORDER CONTINUING HEARING  
ON MOTION FOR SUMMARY  
JUDGMENT AND PROVIDING  
RAND NOTICE**

On May 17, 2013, Defendants filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, which is noticed for a hearing on June 21, 2013. Under Northern District Local Rule 7-3(a), Plaintiff's opposition to the motion was due by no later than May 31, 2013. As of the date of this Order, Plaintiff has not filed an opposition brief.

Plaintiff has an obligation to file an opposition to Defendants' motion for summary judgment and failure to do so may result in the **dismissal** of this case with prejudice. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end Plaintiff's case. *See Rand v. Rowland*, 154 F.3d 952, 953-54 (9th Cir. 1998) (en banc). A principal purpose of the summary judgment procedure is to identify and dispose of factually supported claims. *See Celotex Corp. v. Cattrett*, 477 U.S. 317, 323-24 (1986). In order to

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1 withstand a motion for summary judgment, the opposing party must set forth specific  
2 facts showing that there is a genuine issue of material fact in dispute. Fed. R. Civ. P. 56(e). A  
3 dispute about a material fact is genuine “if the evidence is such that a reasonable jury could  
4 return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248  
5 (1986). In the absence of such facts, “the moving party is entitled to a judgment as a matter of  
6 law.” *Celotex Corp.*, 477 at 323.

7 In opposing summary judgment, Plaintiff is not entitled to rely on the allegations of his  
8 complaint. *See* Fed. R. Civ. P. 56(e); *cf. S. A. Empresa de Viacao Aerea Rio Grandense (Varig*  
9 *Airlines) v. Walter Kidde & Co.*, 690 F.2d 1235, 1238 (9th Cir. 1982) (stating that “a party  
10 cannot manufacture a genuine issue of material fact merely by making assertions in its legal  
11 memoranda”). Rather, his response must set forth specific facts supported by admissible  
12 evidence, *i.e.*, affidavits or certified deposition testimony, showing that there is a genuine issue  
13 for trial. *See id.; see also Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996) (quoting  
14 *Richards v. Combined Ins. Co.*, 55 F.3d 247, 251 (7th Cir. 1995), and stating that it is not a  
15 district court’s task to “scour the record in search of a genuine issue of triable fact”). If  
16 summary judgment is granted, Plaintiff’s case will be dismissed and there will be no trial. *See*  
17 *Rand*, 154 F.3d at 953-54.

18 Accordingly, the Court is providing Plaintiff until **Friday, June 21, 2013**, to file an  
19 opposition to Defendants’ motion. Defendants may file a reply brief no later than **June 28,**  
20 **2013**. The Court HEREBY CONTINUES the hearing on Defendants’ motion for summary  
21 judgment to **August 16, 2013 at 9:00 a.m.** If no opposition is filed, summary judgment may be  
22 granted and Plaintiff’s case will be dismissed. If Plaintiff files an opposition, and if the Court  
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1 determines that the matter is suitable for resolution without oral argument, it will so advise the  
2 parties in advance of the hearing date.

3 **IT IS SO ORDERED.**

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5 Dated: June 6, 2013

  
6 JEFFREY S. WHITE  
7 UNITED STATES DISTRICT JUDGE  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

## RODOLFO VELASQUEZ,

Case Number: CV11-03444 JSW

Plaintiff,

## CERTIFICATE OF SERVICE

V

PATRICK R. DONAHUE et al.

**Defendant.**

1

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

13 That on June 6, 2013, I SERVED a true and correct copy(ies) of the attached, by placing  
14 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by  
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office  
delivery receptacle located in the Clerk's office.

Rodolfo Velasquez  
426 Idora Avenue  
Vallejo, CA 94591

Dated: June 6, 2013

Jennifer Ottolini

Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk